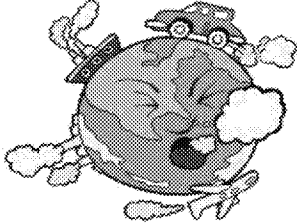


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Air & Radiation Law News for September 20, 2019

**Bloomberg
Environment**

Environment & Energy

Highlights

LEADING THE NEWS

EPA's Wheeler Faces Tough House Crowd After California Curbs

(1)

By Stephen Lee

The EPA won't wait for a review by its science advisers before forging ahead with its effort to strip California of its ability to limit greenhouse gas emissions from vehicles, Environmental Protection Agency Administrator Andrew Wheeler told skeptical lawmakers Sept. 19.

EPA Slams California's Air Quality as It Curbs State's Authority

(1)

By Ryan Beene and Jennifer A. Dlouhy

The Trump administration moved to strip California of its authority to limit greenhouse gas emissions from vehicles, even as it warned the state it needs to do more to combat smog.

California Thumbs Nose at Trump in Fuel Economy Fight (1)

By Emily C. Dooley

As the Trump administration works to gut California's right to regulate fuel efficiency standards, the state's top air pollution regulatory board Sept. 19 approved plans to set its own standards with automakers Ford, Honda, BMW, and Volkswagen.

Surge in Carbon Dioxide From Trump Auto Shift Alarms Scientists

By Jennifer A. Dlouhy

In the fight against climate change, gas-guzzling cars are increasingly seen as the biggest enemy.

Trump's Parting Jab at San Francisco Puts EPA In Uncharted Water

By Josh Wingrove, Romy Varghese and Jennifer A. Dlouhy

Donald Trump's declaration that San Francisco had committed environmental violations by allowing trash produced by its homeless population to enter the ocean outraged California lawmakers and appeared to take the EPA by surprise.

AIR, WATER, AND WASTE

EPA, DOJ Reach Clean Air Act Settlement With Hyundai

By Chiara Vasarri

Under a settlement with the U.S. Environmental Protection Agency and Department of Justice, Hyundai Construction Equipment Americas and Hyundai Heavy Industries has agreed to pay a \$47 million civil penalty for violating Title II of the Clean Air Act.

ENERGY AND NATURAL RESOURCES

Dominion Monopoly Cracks as Companies Win Right to Buy Own Power

By David R. Baker

Dominion Energy Inc. must allow Costco Wholesale Corp., Kroger Co. and other big customers to buy renewable power from other providers, Virginia regulators ruled in a decision that erodes the utility's monopoly in the state.

Dominion Wants to Build America's Largest Offshore Wind Project

By Andrew M. Ballard (Bloomberg Environment)

Dominion Energy has taken a significant step in its plans to build commercial-scale offshore wind turbines.

Logging in Oregon Park Halted for Trails, Fire Hazard Report

By Porter Wells

The Bureau of Land Management can't allow logging in a natural area outside Eugene, Ore., before it traces out bike trails and designates timber preservation zones alongside them, a federal judge ruled.

Duke Is Seeking to Extend the Life of All Its Nuclear Plants

By Nic Querolo

Duke Energy Corp. will seek to renew licenses for all 11 of its nuclear reactors at six sites in North and South Carolina.

Solar and Wind Power Are So Cheap They're Outgrowing Subsidies

By Mark Chediak and Brian Eckhouse

For years, wind and solar power were derided as boondoggles. They were too expensive, the argument went, to build without government handouts.

Ex-Tesla Energy Engineer Wants to Change Your Electrical Panel

By Mark Chediak and Dana Hull

A former Tesla Inc. engineer who helped develop the electric-car maker's home battery product is now trying to reinvent the humble electrical panel.

Bird Population Has Dropped By Billions in North America

By Adam Allington

The North American bird population has fallen by 29% since 1970—about 3 billion birds.

CLIMATE

Carbon-Cutting Cities Plug In to 'Electrify Everything' Movement

By Ari Natter

As part of the Wisconsin Global Warming Task Force, Bruce Nilles advised homeowners to buy water heaters that burn natural gas to reduce the demand for electricity from coal and keep carbon dioxide out of the atmosphere.

FERC Systematically Scrubbing Climate Change From Orders: Glick

By Catherine Traywick

The Federal Energy Regulatory Commission “appears to be systematically scrubbing climate change from our orders,” Democratic Commissioner Rich Glick said at the agency’s monthly meeting Sept. 19.

Bezos to Speak on Sustainability Ahead of Global Climate Protest

By Matt Day

Jeff Bezos is holding a press conference on Amazon.com Inc.’s sustainability efforts on Thursday, a day before workers around the world -- including more than 1,000 of his own employees -- are scheduled to walk out to spotlight climate change.

Amazon Pledges to Meet Paris Climate Pact 10 Years Early

By Brad Stone

Amazon.com Inc. made a significant commitment to environmental sustainability Thursday, promising to meet the terms of the Paris Climate agreement 10 years early.

Baltimore's Climate Suit Subject to Federal Law, Chevron Says

By Porter Wells

Chevron Corp. urged the Fourth Circuit Sept. 18 to keep Baltimore's climate change suit in federal court, arguing the issues of transboundary air pollution and greenhouse gas emissions necessarily implicate federal law.

Some Farmers, Ranchers Press Congress to Support Green New Deal

By Adam Allington

A coalition of farmers and ranchers is asking lawmakers to support the Green New Deal, but it's unclear if the aims of the group extend to farmers around the country.

Global Warming Means Less Milk If Dairies Can't Keep Cows Cool

By Leslie Patton and Lydia Mulvany

A hell year for milk farmers has gotten even hotter.

AROUND THE GLOBE

Germany Poised to Extend Higher Price for Pollution on Drivers

By Mathew Carr, Brian Parkin and Vanessa Dezem

Germany is preparing to impose a cap-and-trade system on carbon emissions from the heating and transport sectors, raising the cost of driving.

Merkel Has One More Crisis to Fight Before She Leaves the Stage

By Arne Delfs and Raymond Colitt

Angela Merkel stood in front of Greenland's melting icebergs in a fire engine-red parka and appealed to world leaders to step up their fight against climate change.

The logo for INSIDEEPA.COM is displayed in a bold, black, sans-serif font. The word 'INSIDEEPA' is in a larger font size than '.COM'. The background of the logo is a light gray with a subtle, repeating pattern of the word 'EPA' in a smaller font.

an online news service from the publishers of Inside EPA

September 20, 2019

The Weekly Focus

DOJ Weighs 'Broader' SEP Limits As New Policy Forces Renegotiations

A top Justice Department (DOJ) official is considering additional "broader" limits on the use of popular supplemental environmental projects (SEPs) as a way to mitigate penalties in enforcement settlements after DOJ last month curbed their use in municipal settlements, forcing renegotiation of some pending deals and likely curbing future settlements that would implement EPA's upcoming lead and copper drinking water rule.

Latest News

Agencies Defend Legal Basis For Scrapping California Auto GHG Waiver

EPA and the Transportation Department (DOT) are defending the legal basis for their just-issued rule revoking California's power to set its own vehicle greenhouse gas limits, asserting the state is preempted by fuel economy law and lacks "compelling and extraordinary" conditions needed to receive such authority under the Clean Air Act.

Science Rule Schedule Slips As EPA Readies Supplemental, Wheeler Says

EPA Administrator Andrew Wheeler told the House science committee Sept. 19 that the agency's schedule for issuing its controversial rule barring regulators from relying on scientific research that is not published has slipped as the agency is preparing to issue a supplemental proposal in early 2020.

Governors Press Congress To Back PFAS Measures In Defense Bill

A bipartisan group of 15 governors is pressing leaders of the House and Senate Armed Services committees to back measures in pending defense authorization legislation that would require EPA and the Defense Department (DOD) to set policies to regulate the chemicals, curb releases and clean up contamination from per- and polyfluoroalkyl substances (PFAS).

CARB Pledges To Enforce Current Auto GHG Rules Despite EPA Preemption

California Air Resources Board (CARB) officials say they will continue to enforce the state's strict vehicle greenhouse gas standards during litigation over the Trump administration's just-issued revocation of the state's Clean Air Act preemption waiver allowing it to set its own requirements.

EPA, NHTSA Release Final Rule Revoking California Auto GHG Authority

EPA and the National Highway Traffic Safety Administration (NHTSA) have released the text of their final regulation revoking California's authority to enforce auto greenhouse gas and zero-emission vehicle (ZEV) standards, with administration officials arguing the step is necessary to preserve a single set of national requirements.

Daily Feed

Trump says EPA to cite San Francisco over homeless pollution

The president's remarks come as the White House is engaged in a heated confrontation with California over vehicle greenhouse gas standards.

EPA Gold King mine spill suits might see three-part trial starting in 2021

Litigation over the 2015 Gold King spill is not expected to go to trial until the summer of 2021 under a new plan that would split its 'complex' proceedings into three parts.

OMB completes review of proposed DOE mercury storage fees rule

The Energy Department's proposed elemental mercury storage fees rule is part of a program to designate a facility for long-term storage of the substance under a 2008 law banning the export of mercury.

EPA, DOJ announce \$47 million pact with Hyundai over illegal engines

The government says that the vehicle manufacturer illegally "stockpiled" thousands of engines with outdated emission controls and later sold them in heavy construction equipment.

Ewire: EPA, DOT detail rule to scrap California auto GHG power

In today's Ewire: The agencies' rule will "help ensure there will be one, and only one, set of national fuel economy and greenhouse gas emission standards for vehicles," they argue.

Environmentalists sue EPA over New Mexico stormwater

"We are disappointed that for years EPA has failed to take action to protect New Mexicans' public health and environment and require that these toxic discharges be controlled and monitored."

Environment Next

Interview

EDF Said Environmental 'Crisis' Requires Policies, Voluntary Programs

As the head of Environmental Defense Fund's (EDF) business partnerships program, Tom Murray has seen industry's trend toward sustainability grow significantly, including companies pursuing voluntary emissions cuts, use of safer chemicals, and a growing focus on addressing climate change.

States See Climate Programs Building 'Infrastructure' For Future Federal Plan

BOSTON -- State officials pushing aggressive green energy mandates and opposing EPA's rule rollbacks see their programs as "infrastructure" for complying with future federal rules, echoing a belief from some Democrats and environmentalists that states will be unable to meet their climate goals without Democrats retaking the White House.

[Read all the latest EPA news, analysis and documents](#) →

GREENWIRE

AN E&E NEWS PUBLICATION

EPA

Wheeler signals retreat from 'secret science' rule



EPA Administrator Andrew Wheeler on Capitol Hill this morning. Francis Chang/E&E News
This story was updated at 2:55 p.m. EDT.

EPA is dropping plans to issue a final version this year of its divisive plan to limit the agency's use of scientific studies in crafting major new regulations, Administrator Andrew Wheeler indicated at a congressional hearing this morning.

Instead, the agency will issue a supplemental proposal early next year, Wheeler told members of the House Science, Space and Technology Committee, adding that it will apply only to future rulemakings.

He again defended, however, the agency's initial rationale for requiring only studies for which underlying data are available for "independent validation."

"I fundamentally believe that the more information we provide to the public, the better our regulations will be and the more they will trust our decisions," Wheeler said.

In an email, Gretchen Goldman of the Union of Concerned Scientists welcomed his decision to rethink the proposal, officially titled "Strengthening Transparency in Regulatory Science."

The group has been among a legion of critics who see the proposal's actual purpose as limiting EPA's ability to consider scientific evidence that might justify the need for stronger regulations.

"This was never legally or scientifically defensible," said Goldman, who is research director of the group's Center for Science and Democracy. "Rather than finding ways to restrict the science EPA uses, Administrator Wheeler should focus on EPA's mission of protecting public health and the environment," she said.

The agency received more than 600,000 public comments on the original proposal. Since the comment period closed last year, "I've had several briefings with my career staff on this," Wheeler told reporters after the hearing when asked why EPA has now opted to proceed with a supplemental proposal.

"They raised a number of issues, I asked a number of questions back to them. They're taking a look and they are going to come forward with a recommendation on a proposal," he said.

While declining to "prejudge" what the supplemental proposal will look like, Wheeler said that agency officials decided the changes would be significant enough "that we need to have additional public comment."

The original draft rule released in April 2018 under then-EPA Administrator Scott Pruitt had left large questions unanswered about how the planned regime would work in practice. As of this July, EPA employees appeared to be struggling to flesh out answers, according to responses provided to an independent panel, the Science Advisory Board, that is reviewing the original proposal (*Greenwire*, Aug. 28).

Asked about the issue today, Wheeler disagreed with that appraisal. "I would say the Science Advisory Board raised a number of issues that we're looking at as well."

"This is not something we're trying to rush through," he added. "We want to make sure we get this right."

When EPA was putting together the original proposal last year, however, the White House regulations office completed a required review in a matter of days <https://www.eenews.net/greenwire/stories/1060080209/>.

Wheeler slowed the pace considerably after becoming acting administrator in July 2018 following Pruitt's forced resignation. EPA had planned to issue the final rule by this December, according to its latest semi-annual regulatory agenda.

The initial proposal drew on legislation introduced earlier this decade by the Science Committee's then-Chairman Lamar Smith (R-Texas). Smith, who retired early this year, dubbed the bill the "Secret Science Reform Act."

In another major retrenchment, EPA no longer intends to pursue a separate proposal to set an agencywide approach for carrying out cost-benefit analyses for draft regulations, Wheeler said. After reviewing comments on the proposal, the agency will take a statute-by-statute approach to implementing that requirement in a "tailor-made" way, starting with the Clean Air Act, Wheeler said.

In response to one lawmaker's questions, Wheeler said EPA — unlike the Agriculture Department and Bureau of Land Management — has no plans to move a substantial number of employees out of the Washington, D.C., area. He also defended a reorganization of the agency's Office of Research and Development set for completion by next month.

"It does not change any of the important work ORD is tasked with — only how we manage those functions," he said in his opening statement.

The two-hour hearing marked Wheeler's first appearance before the committee. While the ostensible theme was "science and technology" at EPA, lawmakers took the opportunity to query Wheeler on topics ranging from recycling to its revocation of California's long-standing Clean Air Act waiver to set its own greenhouse gas emissions standards for cars.

"You created chaos here because the automakers are not going to know what to do," said Rep. Zoe Lofgren (D-Calif.). "This is going to be tied up in court for the foreseeable future."

CAR RULES

Trump officials defend plan to revoke Calif. waiver



Transportation Secretary Elaine Chao at EPA headquarters this morning. Francis Chung/E&E News

Senior Trump administration officials today defended their decision to block California's plans to enforce greenhouse gas emissions standards for cars, saying they run afoul of the law and would stop the benefits that rolling back federal car rules would bring.

Dubbing their decision the "One National Program Rule," the leaders of the Department of Transportation and EPA said California — which is striving to enforce tougher emissions limits for cars sold within its borders and those of 13 states that choose to follow its rules — stands in the way of nationwide consistency for car manufacturers and consumers.

At a news conference this morning at EPA headquarters, accompanied by representatives of supportive groups, EPA head Andrew Wheeler and Transportation Secretary Elaine Chao announced they will seek to stop California from enforcing its emissions rules and its mandate that automakers sell certain numbers of zero-emission vehicles, or ZEVs, in the affected states. It does not affect other California programs that require EPA waivers, like its low-emissions vehicle mandate.

The decision, first announced yesterday by President Trump via tweet, immediately escalates an ongoing feud with California leaders, who have already pledged to sue the administration over its action ([*Greenwire*](#), Sept. 18).

It also presages the agencies' coming action to roll back federal fuel efficiency and greenhouse gas emissions standards, which California threatened to complicate. The Trump administration proposed the rollback, dubbed the Safer Affordable Fuel Efficient Vehicles rule, last year, saying it wanted to freeze standards in 2021 and cancel the planned increases in stringency through 2026.

Chao and Wheeler accused California of trying to set national car standards, which is something only the federal government can do. California, the 13 other states and Washington, D.C., make up more than 40% of the national vehicle market, so they have considerable sway over how cars are made.

"No state has the authority to opt out of the nation's rules, and no state has a right to impose its policies on everybody else in our whole country. To do otherwise harms consumers and damages the American economy," Chao said.

"We embrace federalism and the role of states. But federalism does not mean that one state can dictate standards for the entire country," said Wheeler.

He said eliminating California's power to set its rules "will provide much-needed certainty to the automotive industry, and it sets the stage for President Trump's ultimate objective: a final SAFE rule that will save lives and strengthen the economy by reducing the price of new vehicles and helping more Americans purchase newer, cleaner and safer cars and trucks."

Wheeler said the rollback "is good for public safety, good for the economy and good for the environment," citing disputed findings and arguments, such as that it would increase sales of new vehicles, getting cleaner and safer cars on the road faster.

Neither Chao nor Wheeler repeated Trump's claims that he has made in numerous recent political rallies that new cars are too lightweight to be safe and that the new rule would make them heavier and safer.

Hurdles ahead

California officials, led by Attorney General Xavier Becerra (D) and Gov. Gavin Newsom (D), have already pledged to fight Trump's action in court (*E&E News PM*, Sept. 18).

Congressional Democrats are also plotting strategies to fight the administration's action against California (*E&E Daily*, Sept. 19). Trump and California officials have clashed repeatedly over matters ranging from health care to immigration. Just last night, Trump said EPA would punish San Francisco, alleging that its homeless population is violating water pollution rules (*see related story*).

Trump has been particularly angry at California since the July announcement that four automakers agreed with state regulators to follow stronger emissions rules than what EPA and DOT will make final soon. The federal agencies told California the deal is illegal, and the Department of Justice is investigating it for potential violations of antitrust law.

Environmental groups are expected to join the Golden State in suing over the revocation.

Groups representing automakers have generally been in favor of relaxing the Obama administration standards, but not to the degree the Trump administration proposed. They have also tried to avoid protracted litigation over the matter, or to have a divided vehicle market.

Gloria Bergquist, spokeswoman for the Alliance of Automobile Manufacturers, attended today's event but said it was not necessarily a sign of support.

"We are waiting to see what the final rule looks like and look at all of this together about where we stand," she told E&E News, referring to the final rollback action.

"We have seen in the news that California seems to be suggesting that they're going to be pursuing litigation," she said. "So now this is what we didn't want to happen, this uncertainty. But now we're here, so we're eager to have this all resolved."

Officials had proposed revoking California's waiver as part of the larger rollback. But finalizing the issues separately reflects a desire to have the courts consider them as two different actions.

"This rule will be separable, will be able to be challenged in court on its own if California so chooses. And we can accelerate the timetable for getting a definitive final judgment from the courts," said Steven Bradbury, DOT's deputy secretary and general counsel.

"Once we get those final determinations in court on these focused legal issues, we'll get that certainty for the auto sector and for the entire nation."

California and its allies have argued that the Clean Air Act, under which the Obama administration granted California's waiver in 2013, does not give EPA authority to revoke a waiver.

But EPA General Counsel Matt Leopold said that interpretation is wrong and the courts will agree.

"We have inherent authority to revisit our prior decisions, particularly if they violate the law," he said.

The Trump administration's action relies in part on the Energy Policy and Conservation Act, the law that gives DOT's National Highway Traffic Safety Administration the power to regulate fuel efficiency. It also prevents states from enforcing their own fuel efficiency standards.

"EPCA expressly provides that the federal government regulates fuel economy, not the states. Since there's a direct, scientific link between a car's greenhouse gas emissions and its fuel economy, DOT is determining that EPCA preempts state GHG and zero-emission vehicle programs," Wheeler said.

Furthermore, EPA is officially determining that California lacks the "compelling and extraordinary conditions" that are required under the Clean Air Act for a waiver, he said.

"California cars have no closer link to California climate impacts than do cars on the road in Japan or anywhere else in the world. And California's climate impacts are not extraordinarily distinct from those in other states," Wheeler explained.

Conservative activists, meanwhile, are squarely in Trump's corner.

"While there are some who would rather have those decisions made by bureaucrats in California, we believe that workers, consumers and families can and should be trusted to make decisions that affect their lives," said Tom Pyle, president of the American Energy Alliance.

"The administration's efforts to reform this ill-conceived and wickedly regressive mandate will save consumers money, preserve their choices, and ensure that the federal government, and not California, sets national fuel efficiency policy," he said.

ENERGY MARKETS

FERC proposes changes to Carter-era law promoting renewables

Jeremy Dillon, E&E News reporter Published: Thursday, September 19, 2019



The Federal Energy Regulatory Commission is considering changes to a Carter-era energy law promoting the expansion of renewable energy. Francis Chung/E&E News

An energy law passed during the Carter administration to promote the expansion of renewable energy was opened for reinterpretation today by the Federal Energy Regulatory Commission.

FERC issued a notice of proposed rulemaking on the Public Utility Regulatory Policies Act (PURPA), with Chairman Neil Chatterjee saying the law is prime for an update to better reflect the realities of modern energy markets.

"We have seen tremendous technological advancements in renewables, increasing sophistication in competitive electric power markets and abundant supplies of domestic natural gas," Chatterjee said. "It's time to modernize the commission's implementation of PURPA to reflect those significant developments."

Among potential changes to the 1978 law, the commission will consider giving states more flexibility in how they set power rates from qualifying renewable energy facilities, allowing a 95% reduction in the size of qualifying facilities and setting up a tiered approach to the distance between them.

Chatterjee and fellow Republican Commissioner Bernard McNamee approved the proposal, while Democratic Commissioner Richard Glick concurred and dissented in part. There are two vacant seats on the panel. Sources tell E&E News that President Trump intends to nominate FERC General Counsel James Danly to fill one of those vacancies (*Energywire*, Sept. 19).

Glick disagrees on some proposed changes that he said amount to attempts to "administratively gut the statute" and ignore that Congress has dismissed similar proposals.

Passed in response to the 1973-74 oil embargo imposed on the United States by OPEC, PURPA has long served as a vehicle for bringing more renewable energy facilities onto the grid.

The law requires states and utilities to purchase power from qualifying renewable power facilities.

PURPA critics — including the Edison Electric Institute and state regulators — have faulted the law and its implementation as too intrusive, requiring power purchases that they say aren't needed at higher-than-reasonable prices.

Those complaints have also been abutted by allegations about entities gaming the law's so-called 1-mile rule, which limits the distance between qualifying facilities.

FERC's proposal would:

- Reduce the size of qualifying facilities from 20 megawatts to 1 MW in certain markets, although the 20-MW threshold would remain in place for cogeneration facilities.
- Grant states more flexibility in setting energy rates from qualified facilities' power sales contracts in accordance with changes to the purchasing utility's avoided costs as well as to base those rates on market factors.
- Change the "1-mile rule" with a tiered approach of establishing facilities located within a mile as the same facility; 1 to 10 miles as a separate facility that can be challenged; and 10 miles or more as a "different" facility.

The Edison Electric Institute praised the proposed changes.

"By initiating this important NOPR, Chairman Chatterjee has reaffirmed that there are concrete steps FERC can take to better protect electricity customers from unnecessary energy costs and drive additional investments in renewable energy, all while meeting the commission's responsibilities under the Act," EEI President Tom Kuhn said in a statement.

The solar industry, meanwhile, expressed concern that the changes could damage the push for more renewable energy.

"Rather than focusing on PURPA's goal of ensuring competition, this proposed rule will have the effect of dampening competition and allowing utilities to strengthen their monopoly status," said Katherine Gensler, vice president of regulatory affairs for the Solar Energy Industries Association.

"We will continue to push for PURPA reforms that increase competition, transparency and enforcement," Gensler said.

Electric vehicles will transform a lot more than just the kind of car we buy. E&E News reporters are taking a 6,000-mile, eight-week road trip in an electric car to report on how EVs will change America, including our driving, jobs and habits. [Plug in here.](#)

SENATE

Democrats float bill to block deregulation

Nick Sobczyk, E&E News reporter

Published: Thursday, September 19, 2019

Senate Democrats are looking for a legislative fix to President Trump's regulatory rollbacks amid uproar about the administration's proposal to revoke California's Clean Air Act waiver to set its own auto emissions standards.

Sen. Michael Bennet (D-Colo.), a 2020 presidential candidate, and nearly two dozen other Democrats yesterday introduced an updated version of a bill to block various Trump administration environmental initiatives, including its Clean Power Plan replacement and its proposed freeze of fuel economy standards.

The "Clean Air, Healthy Kids Act," first introduced in the last Congress, would also block other actions outlined in Trump's 2017 executive order that called on agencies to review the Obama administration's climate policies in order to promote economic growth and energy independence.

That includes the administration's move to rescind an Obama-era efficiency rule for lightbulbs, which has become an esoteric Trump talking point on the campaign trail, and its proposed dismantling of methane standards for the oil and gas industry.

"Since the day he stepped foot in the Oval Office, President Trump has attacked science, ignored facts, and intentionally undermined key initiatives to fight climate change," Bennet said in a statement.

"The Clean Air, Healthy Kids Act repeals Trump's most egregious anti-climate change regulations and maintains current safeguards to combat the climate crisis and grow American jobs."

The legislation comes as California and the Trump administration prepare for what promises to be an intense legal battle over car greenhouse gas emission regulations.

Trump announced in a tweet yesterday that the administration would repeal California's waiver, which gives the state the right to set its own emissions standards. It had been planning to use the waiver to maintain standards similar to the Obama-era fuel economy regulations that the Trump administration is now trying to revoke.

EPA Administrator Andrew Wheeler formally announced the repeal this morning (*see related story*).

Bennet's bill is unlikely to go anywhere in the Republican-controlled Senate, but it's a symbolic rebuke from a large group of Democratic senators.

Other co-sponsors include Sens. Kamala Harris (D-Calif.), Elizabeth Warren (D-Mass.), Cory Booker (D-N.J.), Bernie Sanders (I-Vt.) and Amy Klobuchar (D-Minn.), all presidential candidates. Senate Minority Whip Dick Durbin (D-Ill.) has also signed on.

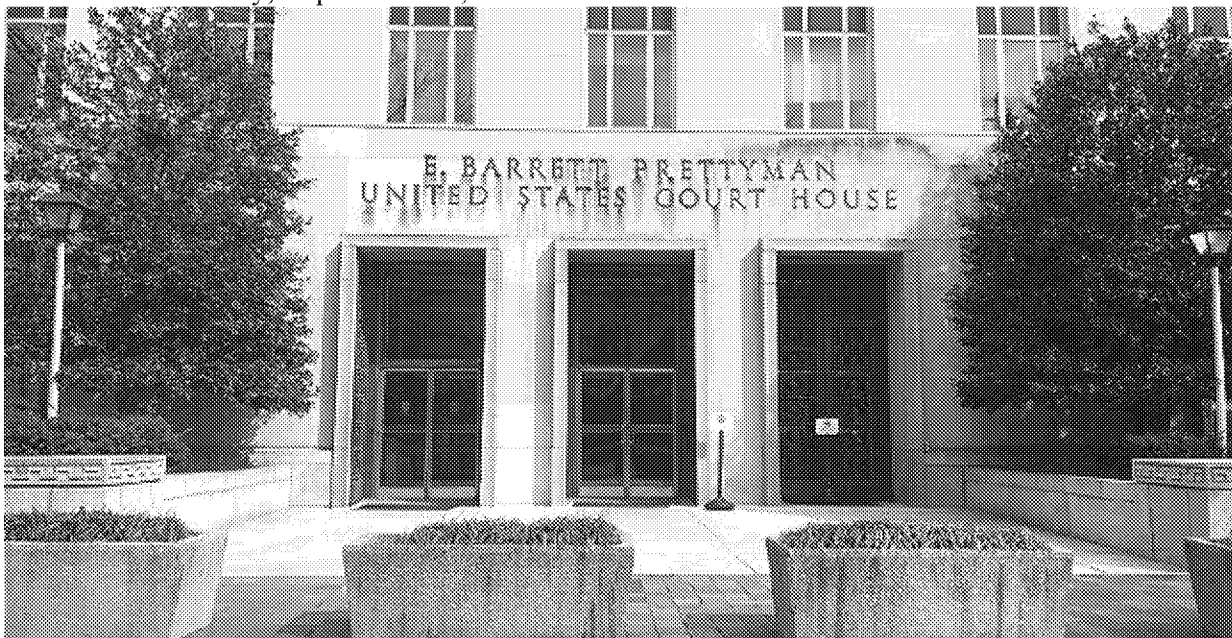
Unsurprisingly, it's supported by a variety of environmental groups, including the League of Conservation Voters and the Natural Resources Defense Council.

AIR POLLUTION

D.C. Circuit puts 'good neighbor' ozone case on ice

Pamela King, E&E News reporter

Published: Thursday, September 19, 2019



A federal appeals court canceled a new round of arguments over EPA's rules for smog-inducing power plant emissions that travel across state borders.

Judges for the U.S. Court of Appeals for the District of Columbia Circuit yesterday tossed from its calendar a hearing in the case *New York v. EPA*, in which environmental groups and Northeastern jurisdictions contend that President Trump's EPA fell short of its Clean Air Act duties when it declined to do more to curb air pollution linked to downwind smog. Oral arguments had been scheduled for tomorrow.

A Sept. 13 ruling by the D.C. Circuit in a separate case, *Wisconsin v. EPA*, requiring a partial redo of the Obama-era Cross-State Air Pollution Rule (CSAPR) spun parties in the *New York* litigation into a complicated negotiation. States, EPA and industry intervenors this week tussled over deadlines for the EPA rewrite and a possible revisit of the *Wisconsin* decision (*Greenwire*, Sept. 18).

The agency called on the court to delay tomorrow's arguments while the agency weighs its options. It asked to get back in touch with the D.C. Circuit after its Oct. 28 deadline for a request to reconsider the *Wisconsin* decision.

"EPA and its counsel will be in a better position to speak to the disposition of the Rule at issue here at that time," EPA wrote in a Tuesday brief.

A three-judge panel for the D.C. Circuit filed a short order yesterday agreeing to EPA's request.

The court last week found that the Obama administration's 2016 CSAPR update, an effort to control cross-state pollution under the "good neighbor" provision of the Clean Air Act, did not go far enough on attainment deadlines. The judges declined to scrap the rule but said environmental critics could reignite their legal battle if EPA does not comply with the ruling.

States and environmental groups argued that the court's decision in the *Wisconsin* case requires EPA to move quickly on cross-state air pollution.

"We were disappointed that the arguments were postponed, but we are evaluating our options to figure out what our next step will be to try to make EPA do its job," said Earthjustice attorney Neil Gormley.

SUPREME COURT

Feds aim to weigh in on Superfund case

Pamela King, E&E News reporter

Published: Thursday, September 19, 2019



The Anaconda Smelter stack and surrounding Superfund area in Montana. Butte Citizens' Technical Environmental Committee

The Trump administration has asked the Supreme Court for a chance to defend the owner of a Montana Superfund site against a challenge that could introduce new stakes for environmental cleanups nationwide.

Government attorneys previously asked the justices to ditch the case, which stems from landowner complaints about contamination near a shuttered copper processing facility (Greenwire, Aug. 29).

EPA devised a cleanup plan under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as Superfund, but affected property owners went to state court to press BP PLC subsidiary Atlantic Richfield Co., the owner of the smelter site, to do more.

"The Court's decision whether to permit the claims to proceed will have a significant effect on the cleanup at this Superfund site and others throughout the country," Solicitor General Noel Francisco wrote in his request yesterday for time to argue alongside the company.

Atlantic Richfield has argued that the Supreme Court's decision to air the dispute opens the floodgate for additional landowner challenges. Requests for remedies beyond the Superfund process could cost "many millions of dollars per site," the company told the court.

Environmentalists also worry that allowing landowners to pursue remediation claims in state courts could have a chilling effect on company commitments to EPA cleanups in the future.

The justices will hear arguments on the case Dec. 3.

HAZARDOUS WASTE

Colo. lawsuit accuses IBM of illegal dumping

Published: Thursday, September 19, 2019

A Colorado development firm has filed a lawsuit against New York-based IBM Corp. alleging improper disposal of toxic waste in a landfill decades ago.

The *Daily Camera* reported that Golden, Colo.-based Stratus Redtail Ranch LLC filed the complaint against IBM and WWD LLC over the waste disposal at what is now a housing development site in Erie, located west of Denver.

The lawsuit contends that WWD was aware of hazardous material at the property before Stratus purchased the site in 2015. It claims Stratus has spent more than \$4 million for cleanup.

The lawsuit says the property was used as a landfill between 1965 and 1969 by IBM to dump waste from its Boulder plant where it made computers, magnetic tapes and reproduction and photocopying equipment.

IBM spokesman Doug Shelton denied wrongdoing by the company.

An attorney for WWD did not immediately return a call for comment. — *Associated Press*

OFFSHORE WIND

Dominion Energy plans 220-turbine project off Va. coast

Published: Thursday, September 19, 2019

Dominion Energy announced plans today to seek approval to build what it says would be the largest offshore wind project in the United States off the Virginia coast.

The company told the Associated Press ahead of a public announcement that the project would include about 220 wind turbines in federal waters it has already leased 27 miles off Virginia Beach.

If approved as proposed, Dominion said, the approximately \$7.8 billion project would produce more than 2,600 megawatts of wind energy by 2026, enough to power 650,000 homes.

"This is, to us, big news. It's a big step for us to accomplish our carbon reduction goals," said Mark Mitchell, vice president of generation construction for Richmond-based Dominion.

The project has been years in the making. Dominion already has an offshore wind pilot project underway, which state regulators approved last year despite their concerns about its cost and risk to customers.

Dominion envisions beginning ocean survey work on the commercial-scale project in 2020, submitting a construction and operation plan in 2022 and starting the first phase of generation in 2024, with 880 MW coming online. Additional phases would come online in 2025 and 2026.

Each of those three phases is expected to cost about \$2.6 billion, Mitchell said, though he added the company expects that estimate to drop as the offshore wind industry becomes better established in the United States.

A single five-turbine wind farm off Block Island, R.I., opened in late 2016 and is the only operating offshore wind farm in the U.S., though other projects along the East Coast are in various stages of development. Mitchell said none would be as large as what Dominion is proposing.

Dominion officially started construction in July on the two turbine, 12 MW pilot project. Though the turbines aren't expected to be installed until next summer, Mitchell said the pilot project — the first to be installed in federal waters under the Bureau of Ocean Energy Management's process — had offered important insights that will apply to the commercial project.

"They were really important to learn exactly how to go about the process, the timing of the process, what the expectations were," Mitchell said.

Environmental groups in Virginia have generally supported greater development of offshore wind and have previously criticized Dominion, saying the company was moving too slowly. — *Sarah Rankin, Associated Press*

NEW HAMPSHIRE

Legislature fails to override vetoes on energy bills

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New Hampshire's Republican Gov. Chris Sununu got the last word yesterday as lawmakers began trying to override his vetoes on more than 50 bills.

Democrats control both chambers of the Legislature, but they need Republican support to reach the two-thirds majority required to override a veto. That proved difficult during yesterday's House session, when lawmakers voted to override just one of two dozen bills they took up.

That bill would allow medical marijuana patients to grow their own supply.

The House came close to overriding vetoes on two energy related bills, falling just six votes short on a bill that would have raised the limit on how much solar and hydropower towns and businesses can generate and sell back to the regional electric grid, and four votes short on a bill that would have subsidized the state's biomass power industry.

State Rep. Michael Harrington (R) said past subsidies simply enabled out-of-state corporations to hire more lobbyists to push for more subsidies.

"That's a real kick in the pants, I think," he said. "Enough is enough."

State Rep. Erin Hennessey (R) argued in favor of the subsidies, saying the ratepayers would pay more in the long run if the biomass plants close.

"Local energy means local jobs," Hennessey said. "It's not about the ownership. It's about the jobs and economic opportunity here."

The House also sustained Sununu's veto of a bill that would have created an independent commission in New Hampshire to redraw the state's legislative districts. Sununu and opponents of the bill argue there is no need for the commission because gerrymandering is rare in the state and the current redistricting process was fair.

Democratic state Rep. Marjorie Smith, the prime sponsor of the bill, emphasized that the bill was written and passed with bipartisan support.

"Rather than being ordered by a court or being directed by a citizen initiative, this Legislature on its own initiative — Republicans and Democrats working together, senators and representatives working together — agreed that of the practices that

sustain our government, nothing is more important than free and fair elections," she said. "It's not about left and right, it's about right and wrong." — *Holly Ramer, Associated Press*

JAPAN

Court: TEPCO execs not guilty in Fukushima disaster

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A Japanese court ruled today that three former executives of Tokyo Electric Power Co. were not guilty of professional negligence in the 2011 disaster at the Fukushima Daiichi nuclear power plant because ensuring absolute safety at nuclear plants was not a government requirement at that time.

The ruling by the Tokyo District Court ended the only criminal trial related to the nuclear accident that has kept tens of thousands of residents away from their homes because of lingering radiation contamination.

Lawyers representing the 5,700 Fukushima residents who filed the criminal complaint said they will push prosecutors to appeal the decision. A group of supporters stood outside the court today with placards reading "Unjust ruling."

The court said ex-TEPCO Chairman Tsunehisa Katsumata, 79, and two other former executives were also not guilty of causing the deaths of 44 elderly patients whose health deteriorated during or after forced evacuations from a local hospital and a nursing home.

The executives were accused of failing to anticipate the massive tsunami that struck the Fukushima Daiichi nuclear plant on March 11, 2011, following a magnitude 9 earthquake, and of failing to take measures that might have protected the plant.

Katsumata and co-defendants Sakae Muto, 69, and Ichiro Takekuro, 73, pleaded not guilty at the trial's opening session in June 2017. They said predicting the tsunami was impossible.

Three of the plant's reactors had meltdowns, spreading radiation into surrounding communities and into the sea.

Prosecutors in December requested five-year prison sentences for each executive, accusing them of not doing enough to guard against the threat of a large tsunami despite knowing the risk.

In its ruling, the court said the defendants held responsible positions at TEPCO, but that did not necessarily mean they were responsible for taking measures beyond those in the legal regulatory framework. It said there is no proof they could have foreseen that a tsunami could flood the plant the way it did in 2011.

TEPCO officials were aware of a need to improve tsunami prevention measures and were considering taking steps by 2008 and 2009, but those steps were in line with government safety standards at the time.

The prosecutors argued that TEPCO could have prevented the disaster had it halted the plant to install safety measures before the tsunami. But the court said the company's responsibility to supply electricity to the public meant that idling the plant would have had a "social impact" and that possible measures were likely not ready in time.

TEPCO declined to comment directly on the ruling but pledged to devote itself to the compensation of disaster-hit people and the cleanup of the plant and its surroundings while enhancing the safety of nuclear plants "with unwavering determination." —

Mari Yamaguchi, Associated Press

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